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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

97 NOV -3 AM 11:17

IN THE MATTER OF:

SUMMITVILLE MINE SUPERFUND SITE  
SITE NO. 08-Y3ARCO Environmental Remediation, L.L.C.,  
RESPONDENT.PROCEEDING UNDER SECTION 122(g)(4)  
OF THE COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND  
LIABILITY ACT, AS AMENDED  
(42 U.S.C. § 9622(g)(4)).FILED  
EPA REGION VIII  
HEARINGS CLERKEPA DOCKET NUMBER  
CERCLA-VIII-98-03CERCLA SECTION 122(g)(4) DE MINIMIS  
WASTE CONTRIBUTOR ADMINISTRATIVE ORDER**I. JURISDICTION**

1. This Administrative Order on Consent (Consent Order or Order) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 *Fed. Reg.* 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E. This authority has been redelegated to the Assistant Regional Administrator for Ecosystems Protection and Remediation.

2. This Order is issued to ARCO Environmental Remediation, L.L.C. (Respondent). The Respondent agrees to undertake all actions required by this Consent Order. The Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

## **II. STATEMENT OF PURPOSE**

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Respondent to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. § 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating one of the potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondent for its fair share, as determined by EPA, of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and to provide full and complete contribution protection for Respondent with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. § 9622(f)(2) and § 9622(g)(5).

## **III. DEFINITIONS**

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

"**Consent Order**" or "**Order**" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

"**Day**" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"**EPA**" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

**"EPA Hazardous Substance Superfund"** shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

**"Information currently known to the United States"** shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

**"Interest"** shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

**"New Information"** shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

**"Paragraph"** shall mean a portion of this Consent Order identified by an Arabic numeral.

**"Parties"** shall mean EPA and the Respondent.

**"Respondent"** shall mean ARCO Environmental Remediation, L.L.C.

**"Response Costs"** shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA.

**"Section"** shall mean a portion of this Consent Order identified by a roman numeral.

**"Site"** shall mean the Summitville Mine Superfund Site Remedial Investigation/Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and is currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1 - Summitville Mine Site -- The area within the mine permit boundaries; Area 2 - Wightman Fork -- The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3 - Alamosa River -- The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4 - Terrace Reservoir -- The area which contains the Terrace Reservoir; and Area 5 - Below Terrace Reservoir -- The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **IV. STATEMENT OF FACTS**

##### **EPA's Response Actions and Costs**

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 42 U.S.C. §§ 9604 and 9606(a) (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued 4 Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States had incurred approximately \$109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

##### **Respondent's Activities and Potential Liability**

8. EPA alleges that the Respondent is liable for reimbursement of the United States' response costs pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

9. From mid-1979 until the latter part of 1983, Respondent's predecessor-in-interest, Anaconda Minerals Company (Anaconda), conducted exploration and related activities at the Site. Due to Site access limitations, severe weather and other adverse Site conditions, Anaconda's actual on-Site exploration activities were conducted for an aggregate period of approximately 17 months, with this period generally coinciding with the summer season of each of the years of 1979 through 1983.

10. Anaconda's exploration and related activities at the Site, as referred to in Paragraph 9 above, consisted of: (1) a core drilling program, consisting of the development

of 380 drill holes. In accordance with the Colorado Mined Land Reclamation Division regulations applicable at the time, these surface drill holes were properly plugged with cement and abandoned; (2) limited access to and exploration of certain underground mine workings, including the Science Mine, Copper Hill Mine, Dexter Mine, Esmond Mine and Chandler Mine, for the purpose of mapping and sampling these workings only; (3) related on-Site activities such as access road maintenance and road construction; and (4) implementation of a hazard elimination program at the Site, including tailings dam stabilization work.

11. Based on Anaconda's findings from these limited exploration and related activities, Anaconda determined it would not be profitable to initiate mining operations at the Site. Accordingly, Anaconda terminated or assigned its leasehold interest in the Site in early 1984, without conducting any ore extraction or physical mine development activities.

12. Anaconda's surface drilling activities resulted in the generation of, at most, 363 cubic yards of waste rock, which may have remained on-Site. Waste rock extracted at the Site was mixed with cement and used to properly plug and close the drill holes, accordance with the Colorado Mined Land Reclamation Division regulations applicable at the time. Summitville Consolidated Mining Company Inc. subsequently mined, milled, processed or otherwise disturbed this same waste rock as a result of its unrelated mining operations.

#### De Minimis Eligibility

13. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million yds.<sup>3</sup> Four million, five hundred thousand cubic yards of this material is being remediated pursuant to the CWP IROD; 6.5 million cubic yards are being remediated pursuant to the HLP IROD.

14. According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River.

15. EPA has determined parties are eligible for a de minimis settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media.

16. EPA has determined that the Respondent's contribution of hazardous substances to each of these media is below the 3% de minimis cut-off established by EPA for the Site.

17. Based on Information currently known to the United States, EPA has calculated the Respondent's de minimis eligibility as follows: (1) assuming all waste rock, approximately 363 cubic yards, generated by Anaconda during its drilling program remained on-Site, EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondent constitutes approximately .0033% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site; and (2) because Anaconda's drill holes were properly plugged and it did not rehabilitate or otherwise undertake mining operations in adits, tunnels or mine workings hydraulically connected to the Reynolds Adit, the Respondent's activities have not contributed any copper loading to the waters at or emanating from the Site.

18. As required by Section 122(g)(1) of CERCLA, 42 U.S.C. §9622(g)(1), EPA has therefore determined that: (A) the amount of material allegedly contributed by the Respondent is minimal in comparison to the total hazardous substances generated or disposed of at the Site; and (B) the toxic or hazardous effect of the hazardous substances allegedly contributed to the Site by Respondent are minimal in comparison to the other hazardous substances at the Site.

19. Section 122 (g)(1) of CERCLA, 42 U.S.C. §9622(g)(1), further authorizes EPA to enter into expedited settlements under Sections 106 and 107 of CERCLA if such settlements involve only a minor portion of the response costs at the facility concerned. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be \$152 million. EPA calculated the settlement amount to be paid by Respondent as follows: EPA and Respondent agree that the material generated and disposed of by Respondent came to be located in the areas to be remediated pursuant to CWP and HLP IRODs. EPA and Respondent estimated that of the 363 cubic yards of material generated and disposed of by Respondent on the Site, 123 cubic yards came to be located in the area to be remediated by the CWP and 240 cubic yards came to be located in the HLP. EPA then calculated the appropriate settlement amount by: (a) taking the amount it cost to remediate Respondent's volumetric share of the CWP; (b) calculating the cost EPA will incur to remediate Respondent's volumetric share of the HLP; (c) adding a percentage for Respondent's share of Sitewide costs; (d) estimating the enforcement costs associated with negotiating and finalizing this AOC; and (e) applying a 100% "premium" payment to Respondent's share of those estimated costs not yet incurred by EPA. In accordance with applicable EPA guidance, this 100% "premium" payment on estimated costs to be incurred provides consideration for EPA's granting the Respondent a covenant not to sue without the normal remedy cost overrun reopener.

20. Based on the factors identified in Paragraph 19 above, EPA determined that the appropriate amount to settle Respondent's potential CERCLA Section 106 and 107 and RCRA Section 7003 liabilities is \$95,000. The settlement amount required to be paid by the Respondent pursuant to this Order therefore represents only a minor portion of the response costs to be recovered for the cleanup of the Site.

## **V. DETERMINATIONS**

21. Based upon the Statement of Facts set forth above and on the Information currently known to the United States, EPA has determined that:

(1) The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

(2) The Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

(3) The Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

(4) There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Sections 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

(6) As to the Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with de minimis waste contributors, including but not limited to, "Standardizing the De Minimis Premium," (July 7, 1995), "Streamlined Approach for Settling with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A)," OSWER Directive No. 9834.7-1D (July 30, 1993), and "Methodology for Early De Minimis Waste Contributor Settlements under CERCLA Section 122(g)(1)(A)," OSWER Directive No. 9834.7-1C (June 2, 1992).

(8) Prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondent may have for response actions and response costs with respect to all releases or threatened releases at or in connection with the Site.

#### **V. ORDER**

22. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

#### **VI. PARTIES BOUND**

23. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of the Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

#### **VII. PAYMENT**

24. Within 10 days of the effective date of this Order, Respondents shall pay a total of \$95,000 to the Hazardous Substance Superfund as provided below.

25. Payment shall be made by cashier's check made payable to "EPA Hazardous Substance Superfund." The check shall reference the Site name, the name and address of the Respondent, EPA CERCLA Number 08-Y3 and DOJ Case No. 90-11-3-1133A and shall be sent to:

Mellon Bank  
EPA Region VIII  
Attn: Superfund Accounting  
P.O. Box 360859M  
Pittsburgh, PA 15251

26. If the Respondent fails to make full payment within the time required by Paragraph 25, Respondent shall pay Interest on the unpaid balance. In addition, if Respondent fails to make full payment as required by Paragraph 25, the United States may, in addition to any other available remedies or sanctions, bring an action against the Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

27. The Respondents' payment includes an amount representing the Respondent's fair share of: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a significant premium to cover the risks associated with this settlement, including

but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondent's payment is based.

28. Payments made under this Section may be placed in a site-specific "special" or "reimbursable" account by EPA. This site-specific reimbursable account within the EPA Hazardous Substance Superfund shall be known as the Summitville Mine Superfund Site Special Account and shall be retained and used by EPA to conduct or finance the response actions at or in connection with the Site. Upon completion of the final remedial action for the Site, any balance remaining in the Summitville Mine Superfund Site Special Account shall be transferred by EPA to the general EPA Hazardous Substance Superfund.

#### **VIII. CERTIFICATION OF RESPONDENTS**

29. By signing this Consent Order, the Respondent certifies, that, to the best of its knowledge and belief, it has:

(1) conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all non-privileged documents currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relate in any way to its liability under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

(2) not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential CERCLA and RCRA liability regarding the Site after notification of such potential liability; and

(3) fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

#### **IX. COVENANTS NOT TO SUE**

30. a. Except as provided in Section XI (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondent for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon full payment of the amount specified in Section VII (Payment) of this Order.

b. The United States' covenant not to sue extends to Respondent, and to its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, only to the extent that the liability of such predecessors-in-interest, affiliates, successors and assigns is derivative of Respondent's liability for those acts of Anaconda Minerals Company as set forth in Paragraph 9-12, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

#### **X. RESERVATION OF RIGHTS**

31. The covenants not to sue by the United States set forth in Paragraph 30 of this Order do not pertain to any matters other than those expressly specified in Paragraph 30. The United States reserves, and this Order is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to the following:

- a) claims based on a failure to make the payments required by Section VII (Payment) of this Order;
- b) criminal liability;
- c) any liability against Respondent that results from its future disposal activities at the Site; or
- d) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

32. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondent seeking to compel Respondent to perform response actions at the Site and/or to reimburse the United States for additional costs of response if New Information is discovered that the Respondent contributed: (a) hazardous substances in an amount greater than 1% of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site; or (b) hazardous substances that contributed to the total copper loading to the waters at or emanating from the Site; or (c) hazardous substances at the Site which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

33. For purposes of Paragraph 32, "New Information" shall not include: (1) any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States; (2) any recalculation of the Respondent's contribution of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site

based solely on Information currently known to the United States; or (3) a calculation of Anaconda's activities giving rise to a contribution to the total copper loading to the waters at or emanating from the Site based solely on Information currently known to the United States.

34. In the event the United States institutes judicial or administrative proceedings against the Respondent pursuant to Paragraph 32 above, the Respondent shall:

(i) be credited, in any subsequent settlement or administrative or judicial proceeding relating to the Site, with the \$95,000 payment made pursuant to Paragraph 24 of this Order;

(ii) retain any defense it may have to liability and any claim it may have under any applicable statute or the common law with regard to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site; and

(iii) continue to grant any waiver or covenant previously granted to the United States under Section XI of this Order for the amount credited to the Respondent, but such waiver or covenant shall be null and void as to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site.

#### **XI. COVENANT NOT TO SUE BY RESPONDENT**

35. The Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees with respect to the Site or this Order, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612 or 9613;

(2) any claim arising out of response activities at the Site; and

(3) any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the Site.

36. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

37. The Respondent also waives any challenge it may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

## **XII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION**

38. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondent each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

39. Respondent consents and agrees to comply with and be bound by the terms of this Order. The United States and the Respondent agree that this Order, Respondent's consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondent or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondent's consent to this Order, nor Respondent's actions in accordance with this Order shall be admissible in evidence against Respondent without its consent, except in a proceeding to enforce this Order. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

40. With regard to claims for contribution against the Respondent, the Parties hereto agree that, as of the effective date of this Order, the Respondent and its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, is entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5) for "matters addressed" in this Consent Order. "Matters addressed" by this Order shall include all claims the United States could bring or any other civil or administrative action the United States could take against the Respondent or its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, related to the Site.

## **XIII. PUBLIC COMMENT**

41. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with

Section 122(i)(3), 42 U.S.C. § 9622(i)(3), EPA may withdraw or modify its consent to this Order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

#### **XIV. ATTORNEY GENERAL APPROVAL**

42. The Attorney General or her designee has approved the settlement embodied in this Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. §9622(g)(4).

#### **XV. EFFECTIVE DATE**

43. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondent that the public comment period undertaken pursuant to Paragraph 41 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

IT IS SO AGREED:

ARCO Environmental Remediation, L.L.C.

BY:

C. Richard Knowles  
C. RICHARD KNOWLES  
President

DATE: 7-2-97

*John*  
*7/2/97*  
*WBB 7/2/97*

IT IS SO ORDERED AND AGREED:

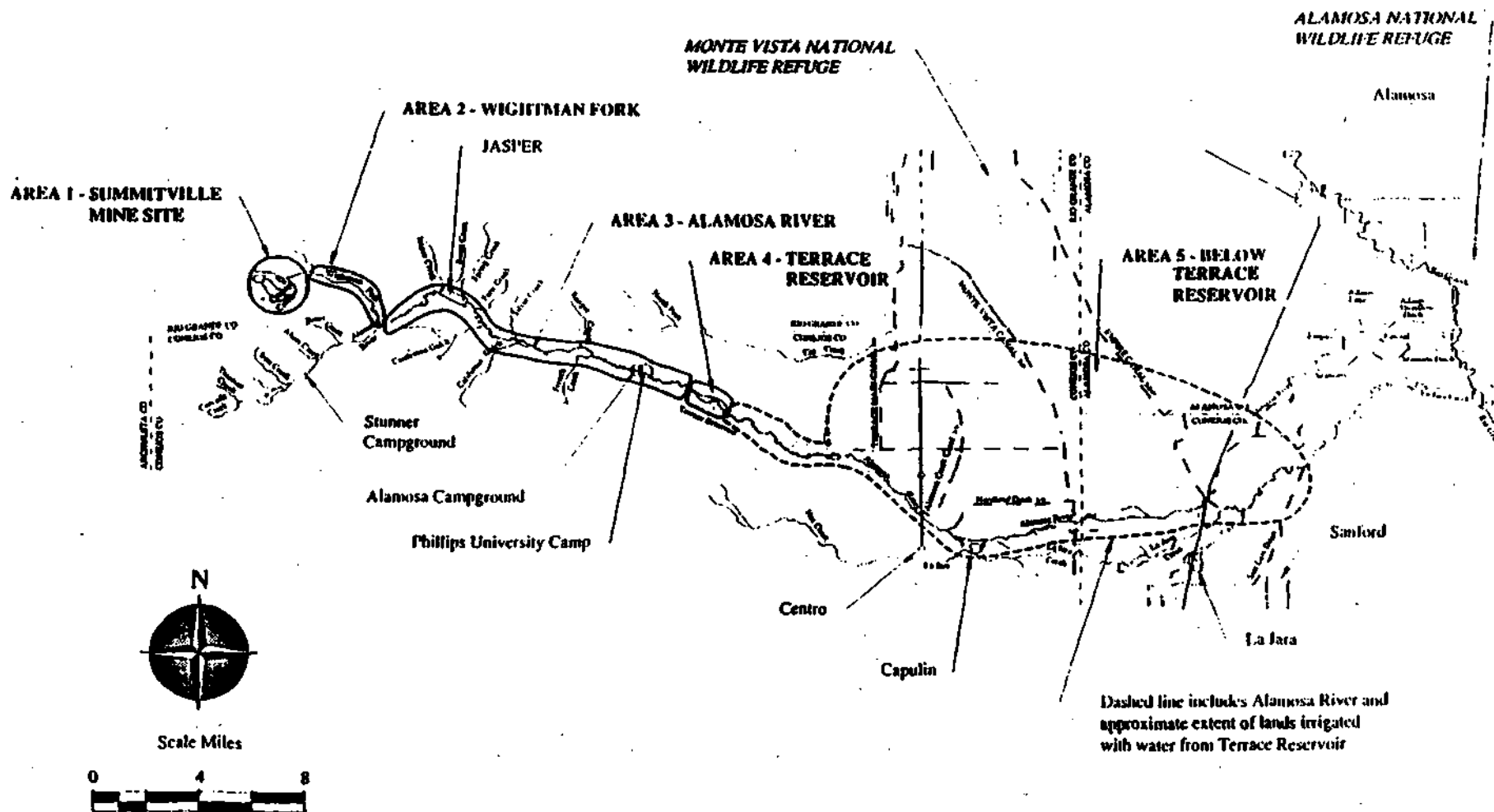
ENVIRONMENTAL PROTECTION AGENCY, REGION VIII

BY:

Martin Heston for  
CAROL RUSHIN  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

DATE: 9/2/97

**Figure 1**  
**Summitville Mine Site**  
**Study Areas for Baseline Risk Assessment**





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 600  
DENVER, COLORADO 80202-2486

Ref: 8ENF-L

**EPA REGION VIII APPROVAL DOCUMENT FOR A  
CERCLA SECTION 122(g)(4) DE MINIMIS WASTE CONTRIBUTOR  
ADMINISTRATIVE ORDER ON CONSENT WITH  
ARCO ENVIRONMENTAL REMEDIATION, L.L.C.**

ARCO Environmental Remediation, L.L.C.'s predecessor-in-interest ("ARCO") conducted limited mining exploration activities at the Summitville Mine Superfund Site from approximately 1979 through 1983. Based on information submitted as part of ARCO's CERCLA Section 104(e) information request responses, EPA Region VIII has determined that these limited exploration activities generated approximately 363 cubic yards of mine waste containing hazardous substances at the Site. EPA Region VIII has also determined that ARCO's limited exploration activities did not contribute any metal loading to the Wightman Fork or other receiving waters at or surrounding the Site. EPA Region VIII has further determined that the nature and toxicity of the waste contributed by ARCO is no different than any other mine waste found at the Site.

Based on these facts, I have determined that ARCO's activities have generated or contributed a de minimis amount of hazardous substances at the Site. After reviewing this factual evidence and being briefed by Region VIII staff, I have also determined that settlement of ARCO's potential liabilities under CERCLA Sections 106 and 107 and RCRA Section 7003 as provided in EPA's Administrative Order on Consent (Order) is fair, reasonable and in the public interest.

The Order provides that EPA Region VIII will receive a \$95,000 settlement amount for a complete covenant not to sue in accordance with CERCLA Section 122(g)(4). I understand that EPA Region VIII is obtaining a premium payment in consideration of the deletion of reopeners from this settlement agreement.

I recommend approval of this Order.

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice



Printed on Recycled Paper



U.S. Department of Justice

*Now/ma*

Environment and Natural Resources Division

*Risner*  
*Bocher*

Office of the Assistant Attorney General

Washington, D.C. 20530

October 15, 1997

William Yellowtail  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region VIII  
999 18<sup>th</sup> Street, Suite 500  
Denver, CO 80202-2466

Re: Approval of proposed administrative settlements  
under CERCLA Section 122(g) at the Summitville  
Mine Superfund Site (D. Colo.)

Dear Mr. Yellowtail:

I have reviewed the administrative settlements proposed by the Agency for certain de minimis PRPs and a de micromis PRP at the Summitville Mine Superfund Site. Under CERCLA Section 122(g)(4), I hereby approve the settlements as set out in the Administrative Orders which have been signed by the respondents. A copy of the Orders are attached.

Sincerely,

Lois J. Schiffer  
Assistant Attorney General

97 OCT 29 AM 11:40